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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM JOHN DAUGHTERY,	)	Case No. 08cv408 (WQH) BLM
	)	
Plaintiff,	)	<b>ANSWER TO PLAINTIFF'S</b>
	)	<b>COMPLAINT BY DEFENDANT LEMUS</b>
v.	)	
	)	
DENNIS WILSON; ESMERALDA	)	
TAGABAN; GRIFFIN; LEMUS,	)	
	)	
Defendants.	)	
	)	
	)	

Defendant LEMUS (hereinafter "Defendant") named in the caption of the Plaintiff's Complaint Under the Civil Rights Act 42 U.S.C. § 1983 ("Complaint"), and sued therein both in an individual and official capacity, does hereby answer that Complaint and demand a trial by jury for all issues pursuant to Federal Rule of Civil Procedure 38(b), and as follows:

**ANSWER**

Paragraph 1 [A. Jurisdiction of the Parties] Defendant affirmatively alleges that said paragraph contains jurisdictional allegations which present legal conclusions and questions of law to be determined solely by the court, to which no answer is required. To the extent an answer is required, each, all, and every allegation contained in said paragraph is denied.

Paragraph 2 [B. Parties] Defendant has insufficient information to admit or deny the allegations contained therein, and therefore, generally and specifically, deny the same. Certain allegations relate to the Plaintiff's residency to which Defendant does not have personal

1 knowledge. Certain allegations may or do present legal conclusions and questions of law to be  
2 determined by the court to which no answer is required or a general and specific denial is made.

3 Paragraph 3 [2. Defendant] Defendant has insufficient information to admit or deny the  
4 allegations contained therein, and therefore, generally and specifically, deny the same.

5 Defendant admits that the San Diego Police Department and/or the City of San Diego hire  
6 and/or employ police officers, that Defendant was so employed in or about the year 2006, and the  
7 month of March therein, and that his employment was within the County of San Diego.

8 Defendant does also admit that in or about March 2006 Plaintiff did sell a controlled  
9 substance to an undercover law enforcement officer, and upon information and belief Plaintiff  
10 was taken into custody, arrested and charged with crime(s) relating to his conduct to engage in the  
11 sale of controlled substance(s) and or illegal activity.

12 Certain allegations may or do present factual and/or legal questions and/or conclusions to  
13 be admitted by others or to be determined by the Court to which no answer is required or a  
14 general and specific denial is made.

15 Paragraph 4 [C. Cause of Action- Count 1 [And 2] - Violation of Civil Rights – “4<sup>th</sup>  
16 Amendment USCA Unreasonable Search and Seizure, Excessive use of Force”] There is no  
17 allegation specific to this Defendant. Defendant denies the allegations contained therein, and/or  
18 have insufficient information to admit or deny the allegations and therefore, generally and  
19 specifically, deny the same. A specific and general denial is made as to the sub-paragraph  
20 “Supporting Facts.” Certain allegations may or do present factual and/or legal questions and/or  
21 conclusions to be admitted by others or to be determined by the Court to which no answer is  
22 required or a general and specific denial is made.

23 Defendant does also admit that in or about March 2006 Plaintiff did sell a controlled  
24 substance to an undercover law enforcement officer, and upon information and belief Plaintiff  
25 was taken into custody, arrested and charged with crime(s) relating to his conduct to engage in the  
26 sale of controlled substance(s) and or illegal activity.

27 Defendant does have insufficient information to admit or deny those matters which are  
28 alleged to have occurred and/or those matters which did occur outside of his presence, and he

1 therefore does generally and specifically deny the same.

2 Page 4 of 8 indicates in the initial paragraph - Count 2 - Violation of Civil Rights – “14<sup>th</sup>  
3 Amendment USCA Unreasonable Search and Seizure; Excessive use of Force”, and the  
4 subsequent sub-paragraph “Supporting Facts” appears to be a continuance of the factual  
5 allegations set forth on the previous page relating to Cause of Action- Count 1 [and/or 2] -  
6 Violation of Civil Rights – “4<sup>th</sup> Amendment USCA Unreasonable Search and Seizure, Excessive  
7 use of Force”. There is no allegation specific to this Defendant. Defendant denies the allegations  
8 contained therein, and/or have insufficient information to admit or deny the allegations and  
9 therefore, generally and specifically, deny the same. A specific and general denial is made as to  
10 the sub-paragraph “Supporting Facts.” Certain allegations may or do present factual and/or legal  
11 questions and/or conclusions to be admitted by others or to be determined by the Court to which  
12 no answer is required or a general and specific denial is made.

13 Defendant does also admit that in or about March 2006 Plaintiff did sell a controlled  
14 substance to an undercover law enforcement officer, and upon information and belief Plaintiff  
15 was taken into custody, arrested and charged with crime(s) relating to his conduct to engage in the  
16 sale of controlled substance(s) and or illegal activity.

17 Defendant does have insufficient information to admit or deny those matters which are  
18 alleged to have occurred and/or those matters which did occur outside of his presence, and he  
19 therefore does generally and specifically deny the same.

20 Page 5 of 8 indicates in the initial paragraph - Count 3 - Violation of Civil Rights – “14<sup>th</sup>  
21 Amendment USCA Unreasonable Search and Seizure; Excessive use of Force”, and the  
22 subsequent sub-paragraph “Supporting Facts” appears to be a continuance of the factual  
23 allegations set forth on the previous page(s) relating to Cause of Action- Count 1 [and/or 2] -  
24 Violation of Civil Rights – “4<sup>th</sup> Amendment USCA Unreasonable Search and Seizure, Excessive  
25 use of Force”. Defendant denies the allegations contained therein, and/or have insufficient  
26 information to admit or deny the allegations and therefore, generally and specifically, deny the  
27 same. A specific and general denial is made as to the sub-paragraph “Supporting Facts.” Certain  
28 allegations may or do present factual and/or legal questions and/or conclusions to be admitted by

1 others or to be determined by the Court to which no answer is required or a general and specific  
2 denial is made.

3 Defendant does also admit that in or about March 2006 Plaintiff did sell a controlled  
4 substance to an undercover law enforcement officer, and upon information and belief Plaintiff  
5 was taken into custody, arrested and charged with crime(s) relating to his conduct to engage in the  
6 sale of controlled substance(s) and or illegal activity.

7 Defendant does have insufficient information to admit or deny those matters which are  
8 alleged to have occurred and/or those matters which did occur outside of his presence, and he  
9 therefore does generally and specifically deny the same.

10 Paragraph 5 [D. Previous Lawsuits and Administrative Relief] Defendant has insufficient  
11 information to admit or deny the allegations contained therein, and therefore, generally and  
12 specifically, deny the same. A general and specific denial is made as to the sub-paragraph  
13 regarding the question “have you previously sought and exhausted all forms of informal or formal  
14 relief . . . .” and as to the allegations specifically made therein.

15 Paragraph 6 [E. Request for Relief] Defendant has insufficient information to admit or  
16 deny the allegations contained therein, and therefore, generally and specifically, deny the same.  
17 A general and specific denial is made as to sub-paragraph “2. Damages.” A general and specific  
18 denial is made as to sub-paragraph “3. Punitive Damages.” Certain allegations may or do present  
19 legal conclusions and questions of law to be determined by the court to which no answer is  
20 required or a general and specific denial is made.

21 Paragraph 7 [F. Demand for Jury Trial] Defendant has insufficient information to admit or  
22 deny the Plaintiff’s allegations, and therefore, generally and specifically, deny the same. A  
23 demand for a trial by jury for all issues is requested by the Defendant.

24 Paragraph 8 [G. Consent to Magistrate Judge Jurisdiction] Defendant has insufficient  
25 information to admit or deny the Plaintiff’s allegations, and therefore, generally and specifically,  
26 deny the same.

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**AFFIRMATIVE DEFENSES**

As separate, distinct and affirmative defenses to the Complaint on file herein, and to each cause of action, Defendant alleges the following:

**I**

The Complaint fails to state facts sufficient to constitute a cause of action against Defendant.

**II**

Plaintiff does not have standing to seek relief for the causes of actions, as set forth in the Complaint.

**III**

Defendant acted in good faith and with a reasonable belief that his conduct was lawful and necessary.

**IV**

Defendant is immune from liability, including in that a public entity/employee is not liable for an injury arising out of its acts or omissions or of a public employee, in the absence of a statute declaring such liability.

**V**

Defendant is not liable for an injury arising out of act or omission where the employee(s) and/or entity is/are immune from liability.

**VI**

Defendant is not liable for punitive damages.

**VII**

Defendant is not liable for injuries resulting from acts or omissions which were an exercise of discretion in the absence of a statute declaring such liability.

**VIII**

Defendant is not liable while acting within the scope of his duties for injuries resulting from lawful, judicial or administrative proceedings.

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**IX**

Defendant is not liable for the execution or enforcement of the California Code, including the Penal Code, including where due care is exercised.

**X**

Defendant is not liable for violation of the plaintiff's civil rights in that the alleged wrongful acts were not under color of any statute, ordinance, regulation, custom or usage of the City of San Diego.

**XI**

The use of force, if any, at the time of the contact at issue, was undertaken and/or attempted so as to persuade the plaintiff to follow directions; and each allegation against defendant with regard to any use of force, pertains to a use of force, if any, that was undertaken and conducted in a manner that was necessary for the occasion. Further, this answering defendant did not witness the use of force at issues, and therefore did not witness and/or have any opportunity to intervene, and is not therefore liable for any alleged unconstitutional or unreasonable use of force.

**XII**

Plaintiff himself was responsible for the events at issue, did cause the events at issue to occur and/or was negligent in and about the matters alleged in the Complaint and said conduct and/or carelessness on his own part proximately contributed to the happening of the alleged incident, injuries and damages complained of, if any such exist.

**XIII**

Defendant was at all times alleged in the Complaint performing duties required by law under conditions required by law.

**XIV**

Any and all acts and/or the alleged acts of Defendant at or near the time alleged in the Complaint were reasonable and each defendant had reasonable and/or probable cause to act in the manner that they did. At the time of the detention, arrest and/or incarceration complained of in the Complaint, Defendant had probable cause to believe Plaintiff had committed and/or was

1 committing an unlawful offense, and/or an unlawful offense in the presence of an officer.

2 **XV**

3 Defendant is not liable pursuant to Government Code section 815.2(b) and 820.2 in that  
4 the injuries and damages, if any, were the result of the exercise of the discretion vested in public  
5 employees and officers.

6 **XVI**

7 Defendant is not liable pursuant to Government Code section 815.2(b) and Penal Code  
8 section 847 in that any detention or arrest was lawful.

9 **XVII**

10 Defendant and/or a public employee is not liable for his acts or omissions, while  
11 exercising due care, in the execution or enforcement of any law, including pursuant to  
12 Government Code section §§ 820.4 and/or 815.2.

13 **XVIII**

14 Defendant and/or a public employee is not liable for an injury caused by the act or  
15 omission of another person, including pursuant to Government Code section 820.8.

16 **XIX**

17 Defendant is not liable for any injury, including any injury caused by an alleged failure to  
18 furnish or obtain medical care for a person in custody, and including pursuant to Government  
19 Code sections 844.6 and or 845.6.

20 **XX**

21 Defendant is not liable as Plaintiff's own acts and conduct caused the underlying events at  
22 issues in the Complaint to occur, and but for the acts of the Plaintiff, the events alleged in the  
23 Complaint would not have occurred, and/or Plaintiff would not have been involved or engaged or  
24 otherwise subject to the matters alleged in his Complaint, including any citation, detention,  
25 apprehension, arrest, or control or force, if any, or otherwise having sustained the matters alleged,  
26 including any and all injuries, inconvenience and damages alleged in the Complaint.

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28 ////

**XXI**

The Complaint and/or certain causes of action therein is/are barred by operation of law, including the applicable statute of limitations for this action, and/or applicable claims presentation requirements, including that Plaintiff failed to comply with the claims presentation requirements set forth in Government Code section 901, et seq.

**XXII**

As to the acts alleged undertaken by Defendant the conduct in question did not constitute a violation of a federally protected right.

**XXIII**

As to the acts alleged undertaken by Defendant, Defendant is shielded from liability pursuant to the doctrine of qualified immunity. At all times, Defendant acted within the scope of employment and with probable cause.

**XXIV**

A reservation of right is made to allow amendment of the Answer, to change or add an Answer and/or affirmative defense.

WHEREFORE, this answering defendant prays judgment as follows:

1. Dismissal of the Plaintiff's case
2. Plaintiff takes nothing by his Complaint;
3. Defendant receives his costs of suit incurred herein;
4. Such other relief as the court deems proper.

Dated: May 27, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Wendy Davisson  
Wendy E. Davisson  
Deputy City Attorney  
Attorneys for Defendants  
TAGABAN, GRIFFIN & LEMUS